

CURTIS WHEELER

IBLA 81-326

Decided May 29, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer W-73161.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First Qualified Applicant

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

APPEARANCES: Curtis Wheeler, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Curtis Wheeler has appealed from a decision of the Wyoming State Office, BLM, dated January 14, 1981, which rejected his noncompetitive oil and gas lease offer W-73161 for the reason that he had failed to comply with the requirements of 43 CFR 3111.1-1(a) by filing only four copies of the lease offer. Appellant submitted a fifth copy of the

lease form with his notice of appeal which was received by the State office February 4, 1981.

[1] The governing regulation in 43 CFR 3111.1-1(a) provides in pertinent part:

(a) Application -- (1) Forms: Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, * * *. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). [Emphasis added.]

Persons filing noncompetitive offers to lease are also made aware of these filing requirements on the back of the lease form (No. 3110-1 Eleventh Edition (Mar. 1977)) in the section titled "Instructions." Under the general instructions it is clearly emphasized in section 4 that "[t]his offer must be prepared in quintuplicate and filed in the proper office." (Emphasis added.)

The regulations in 43 CFR 3111.1-1(e) specifically set out all the curable defects for the filing of noncompetitive offers. ^{1/} The failure to file the required number of copies is not included. Thus, in this circumstance, where the applicant fails to file the required number of copies he is not a qualified applicant and the offer must be rejected. BLM's decision was correct when rendered. John Errebo, Jr., 32 IBLA 191, 192 (1977); Duncan Miller, 10 IBLA 208, 211 (1973).

In similar circumstances, this Board, however, has held that a noncompetitive over-the-counter lease offer rejected for a defect also not listed as curable under 43 CFR 3111.1-1(e) (failure to file required

^{1/} This section of the regulation provides:

"(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

"(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

"(2) An offer completed in pencil or script.

"(3) An offer on a lease form not currently in use.

"(4) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing."

sole party in interest statement pursuant to 43 CFR 3102.7) may be reinstated when the required filing is made. We pointed out that the offer may only earn priority as of the time that filing is made. Metro Energy, Inc., 52 IBLA 369 (1981); see also Bear Creek Corp., 5 IBLA 202 (1972). Thus, we hold that appellant's offer in this case may also be considered to be cured with the filing of the required document and it may earn priority as of February 4, 1981, the date when the required fifth copy of the lease offer was filed with BLM. Thus, the offer may proceed to adjudication with a priority established as of February 4, 1981.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

